

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

KEVIN H. GOODRICH,)	
)	
Plaintiff,)	
)	
v.)	Case Number CIV-04-1619-C
)	
GENERAL DYNAMICS NETWORK)	
SYSTEMS, INC.,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Now before the Court are two motions filed by Defendant General Dynamics Network Systems, Inc. (GDNS), a Motion to Consolidate and an Application to Withdraw Motion to Compel. Plaintiff Kevin H. Goodrich (Goodrich) filed responses to which GDNS filed replies. Accordingly, the motions are now ripe for disposition.

For GDNS's motion for consolidation, it argues that Goodrich's two actions against GDNS should be consolidated under Fed. R. Civ. P. 42 as they both involve substantially the same issues of fact and law. In accordance with the concessions of GDNS's counsel to keep the actions separate until a later stage (Def.'s Br., Dkt. No. 18, at 2 ¶ 4), GDNS's Motion to Consolidate will be denied without prejudice to its reassertion at a later time.

For GDNS's application to withdraw, it states it wishes to forego the costs associated with disputing the arbitration issue and, instead, proceed with litigating Goodrich's claims in this Court. Goodrich objects on the ground that he incurred attorney's fees in connection with responding to GDNS's motion to compel arbitration and he seeks recovery of the fees

incurred in drafting the response if the Court were to deny GDNS's motion to compel arbitration.

First, the goal of federal procedure is "to secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. Surely bypassing the arbitrability of the claim and proceeding directly to the merits furthers that goal. Moreover, it is certainly not unusual for a litigant to withdraw or concede a motion once the response brief has been filed. This request does not, without more, justify a finding of malice or bad faith so as to warrant either its denial or the imposition of attorney's fees or other sanctions.

Accordingly, GDNS's Application to Withdraw Motion to Compel (Dkt. No. 23) is **GRANTED**; its Motion to Consolidate (Dkt. No. 11) is **DENIED** at this time.

IT IS SO ORDERED this 26th day of August, 2005.


ROBIN J. CAUTHRON
United States District Judge